

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 12, 2011, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Tom Day
Walter Schmidt
Nancy Bonniwell
Richard Bayer

BOARD MEMBERS ABSENT: Robert Bartholomew

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Sheri Lieffring, Senior Land Use Specialist
Paul & Betsy Keppeler, owners, BA11:036
Jon Erdmann, landscaper, BA11:036
Madlyn Campione, owner, BA11:038
Jerry & Beverly Peterson, neighbors, BA11:036
David Kersey, owner, BA11: 037
Steve Schuyler, builder, BA11:037

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bayer *I make a motion to approve the Summary of the Meeting of September 14, 2011.*

The motion was seconded by Mr. Schmidt and carried unanimously.

NEW BUSINESS:

BA11:036 PAUL AND ELIZABETH KEPPELER (OWNERS) JEFF HORWATH FAMILY BUILDERS (AGENT):

Mr. Schmidt *I make a motion to deny the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, along with the petitioner's testimony. Further, the petitioner did not state any hardship.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the shore, floodplain, and wetland/conservancy setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance. The reasons for this recommendation are as follows:

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Strict adherence to the district regulations does not prevent a reasonable use of the property. Without the granting of variances, the petitioners have a building envelope that averages 75-85 ft of depth and 60-70 ft. of width (approximately 5500-6000 sq. ft.). A large home can be easily designed to fit within an area this large. Although the property does have some physical limitations because of the shoreline, floodplain, and wetland areas, there is still a large building envelope available without the granting of any variances. Variances should only be granted to accommodate physical limitations on a property that prevent a reasonable use of the property; not to accommodate the personal preferences or needs of the current property owner. Furthermore, the Board of Adjustment's previous Decision granting variances for construction of a new home on this property in 1998 is more restrictive than what is permissible without variances today. Therefore, the approval of requested variances from the shore, floodplain, and wetland/conservancy setback requirements would not be in conformance with the purpose and intent of the Ordinance.

BA11:037 DAVID N. KERSEY LIVING TRUST (OWNER) J.D. GRIFFITHS CO. (AGENT):

Ms. Bonniwell

I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the requested variances from the road setback, offset, and open space requirements for the garage, and **approval** of the requested special exception from the accessory building floor area ratio requirements for the garage, subject to the following conditions:

1. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
2. The garage shall not exceed 480 sq. ft. as measured to the outer edges of the walls with overhangs not exceed 2 ft. in width. Any upper level storage area must have a ceiling height

of less than 7 feet as measured from floor to ceiling; any portion that exceeds 7 feet in height shall count towards the floor area ratio calculation. If 50% or more of any upper level has a ceiling height of 7 feet or greater, the entire area will count against the floor area ratio requirement. Please note that this is consistent with the standards contained in the Uniform Dwelling Code.

3. No other accessory buildings or structures are permitted without obtaining the required permits and approvals.
4. Prior to the issuance of a Zoning Permit for the garage, the structure that appears to be a deck under construction must be removed unless all proper permits and approvals are obtained for it to remain and be completed.
5. The garage shall be located in the location shown on the Plat of Survey originally dated 6/19/06 with a revision date of 9/12/11.
6. The proposed retaining wall shall remain a minimum of 5 ft. from all lot lines and outside of the road right-of-way.
7. Prior to the issuance of a Zoning Permit, a complete set of scaled construction plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval. The final plans shall continue to include window inserts at the top of the garage door or similar mitigating measures as shown on the preliminary plans.
8. Prior to the issuance of a Zoning Permit, a new and updated Plat of Survey showing the staked-out locations of the proposed garage and retaining wall, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. In order to ensure the construction of the garage does not result in adverse drainage onto adjacent properties and complies with the Ordinance grading requirements, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 8.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow the owner to construct a garage on the subject property. It is reasonable to grant the variances requested due to the topography of the lot and the fact that there is currently no storage on the property.

The proposed garage is in the most logical place on the property and there are several garages on South Shore Drive constructed very close to the road, so this approval fits in with the existing pattern of development. The buildable area on the site for a garage is limited by the proximity to the road and the steep topography leading to the lake. It is also impossible to meet the open space requirements due to the size of the lot; therefore, to require compliance with the Ordinance requirements relative to open space would be unnecessarily burdensome on the property owner in that no garage could be constructed on the site. The special exception from the accessory building floor area requirements is reasonable as this lot has special circumstances due to its small size. The allowable accessory building floor area would only be 341 sq. ft. A special exception is a request for a minor adjustment of the Ordinance requirements owing to special conditions of the property. The special exception must be necessary and desirable and must not adversely affect adjacent property owners. It differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. The Board has held in many other instances, and even on smaller lots, that is reasonable to allow a 400 sq. ft. garage to provide reasonable use. Although the proposed garage is 484 sq. ft., the overall floor area ratio on the property is still in compliance with the Ordinance requirements. The residence was recently constructed (2006), so there is no reason to believe that this property would not continue to remain in compliance with the overall floor area ratio requirements. The construction of the garage, as conditioned, will not have an adverse affect on the public interest and welfare. Therefore, the approval of this request, as conditioned, would be within the purpose and intent of the Ordinance.

BA11:038 MADLYN CAMPIONE:

Ms. Bonniwell

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report. In addition, it should be stated that the approval, as conditioned, will eliminate an undesirable deck that sits above-grade and replacing it with an at-grade patio that will be much less intrusive.*

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit removal of the existing deck and concrete stairs and construction of a new patio and stone staircase, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, a new stake-out survey of the entire property showing the location of the proposed patio and stairs, as well as any proposed sidewalks or walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the field identified location of the 100-year floodplain elevation on the property. The survey must also indicate the surveyed lot size.
2. The patio shall be no larger than 18 ft. deep by 27 ft. wide, as proposed, and must remain a minimum of 38 ft. from the shore and floodplain.
3. No retaining walls are permitted within 75 ft. of the lake. A retaining wall as defined by the Ordinance is: *"A structure more than 24 inches in height, as measured from finished grade, or a combination or series of multiple structures more than 24 inches in height from finished grade, constructed of man-made or natural materials for the main purpose of retaining land or stone and resisting the lateral pressure of the land or stone. For the purposes of this Ordinance, outcroppings are also considered retaining walls if they meet the retaining wall definition, unless they are naturally occurring in the landscape."*
4. The proposed stairs shall not exceed 4 ft. in width and shall terminate in the approximate area shown on the preliminary plan (approximately 37 feet from the shoreline).
5. In order to ensure the proposed construction does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 1. All grading requirements of the Ordinance must be met or a Conditional Use Permit for the grading/filling may be required prior to issuance of a Zoning Permit for the patio and associated stairs.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The existing deck received variances to legalize its construction in 1996 and the proposed patio is smaller than the existing deck; therefore, it would be unreasonable not to permit the patio construction. A detailed grading plan was not received, but as conditioned, any necessary grading will meet all requirements of the Ordinance. Therefore, the approval of requested variances, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None.

ADJOURNMENT:

Mr. Schmidt *I make a motion to adjourn this meeting at 8:00 p.m.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy Bonniwell", written in dark ink.

Nancy M. Bonniwell
Secretary, Board of Adjustment